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(29,831)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 157

WILLIAM NAIIMEH, APPELLANT,

vs.

THE UNITED STATES OF AMERICA

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE EASTERN DISTRICT OF NEW YORK

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(1990, 0.32)

STATE CRITIQUE AND THE CRITICAL AMERICANS

-381- ЖИТЬ ЯЗВОЙ

2020.03.03

www.jstor.org/stable/10.1080/0022216X.2017.1393661

1
SUPREME COURT OF THE UNITED STATES

WILLIAM NAHMEH,
Appellant
(Libelant below),

—against—

UNITED STATES OF AMERICA,
Appellee
(Respondent below).

2
Statement.

Appeal from a decree of the District Court of the United States for the Eastern District of New York, dismissing the libel of the libelant.

The libel was filed on the 30th of March, 1922.

The original parties are as hereinbefore set forth.

There has been no change of parties.

On March 30, 1922, notice of the filing of the libel was given to the United States Attorney for the Eastern District of New York, and a copy was duly served upon him and a copy was sent by registered mail to the Attorney General of the United States, at Washington, D. C.

Exceptions to the libel were filed December 16, 1922, and a copy of the same was served on the proctor for the respondent on December 19, 1922.

By notice of motion dated December 7, 1922,

4

Statement

libelant moved to transfer the above entitled action to the United States District Court for the Southern District of New York.

The motion was heard before the Hon. Edwin L. Garvin, District Judge.

On January 5, 1923, Judge Garvin handed down a memorandum opinion dismissing the libel.

On the 19th of January, 1923, an order was entered denying the libelant's motion and decreeing that the libel be dismissed.

5. Libelant's claim of appeal was allowed on the 26th of March, 1923.

Citation was served on the United States Attorney on March 30, 1923.

6

Libel.

TO THE HONORABLE JUDGES OF THE UNITED STATES
DISTRICT COURT FOR THE EASTERN DISTRICT OF
NEW YORK

IN ADMIRALTY

4467

The libel of William Nahmeh, in
a cause of action, civil and mari-
time, for personal injuries,
against the United States of
America, as owner of the S. S.
Quinnipiac, under the Act of
March 9, 1920, respectfully shows 8
and alleges:

ACTION UNDER SPECIAL RULE FOR SEAMEN TO SUE
WITHOUT SECURITY OR PREPAYMENT OF FEES FOR
THE ENFORCEMENT OF THE LAWS OF THE UNITED
STATES COMMON AND STATUTORY FOR THE PRO-
TECTION OF THE HEALTH AND SAFETY OF SEA-
MEN AT SEA.

First: That libelant resides within the
Eastern District of New York.

Second: Upon information and belief, the
respondent, United States of America, owned,
operated, managed and controlled a merchant
vessel known as the S. S. Quinnipiac. 9

Third: That on or about the 3rd of August,
1920, libelant was employed on the aforemen-
tioned steamship as fireman. That while so
employed and while in the performance of his
duties, libelant suddenly slipped on the deck

10

Libel

and was precipitated with great force and violence to the floor of the deck, whereby he sustained severe, serious and permanent bodily injuries.

11

Fourth: That libelant thereby became sick, sore, lame and disabled; has been and will be confined to his home; has suffered and still suffers great pain; has lost and will have to lose large sums of money which he otherwise would have earned; has paid out and will have to pay out large sums of money for medical and surgical attendance, for medicines and for his maintenance and cure, all to his damage in the sum of \$100,000.

12

Fifth: That said injuries were due to the negligence of the respondent and the officers and seamen in command of said vessel in permitting the said deck to become oily and greasy and by reason of the fact that a dynamo and other machinery from which oil and grease leaked or escaped, and from which the oil and grease upon which the libelant was caused to slip had leaked or escaped, was defective and of improper construction and design and not properly equipped with appliances to prevent oil or grease from leaking therefrom; and by reason of the fact that the said deck was improperly and insufficiently lighted so that the libelant was unable to see the dangerous condition of it.

FOR A SECOND CAUSE OF ACTION LIBELANT RE-
ALLEGES ALL THE FACTS HERETOFORE SET FORTH
AND IN ADDITION THERETO ALLEGES:

Sixth: Though libelant was in dire need of prompt and proper medical and surgical attendance and though he made request for the same, none was furnished, whereby libelant was caused to suffer excruciating pain and agony and his injuries were greatly aggravated and the amputation of one of his legs was made necessary, all to his damage in the sum of \$100,000. 14

Seventh: That all and singular the foregoing premises are true and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Wherefore, libelant prays that a process in due form of law, according to the course of this Honorable Court in admiralty and maritime cases, may issue against the said respondents, and that they may be compelled to answer upon oath, all and singular the matters aforesaid, and that this Honorable Court would be pleased to decree the payment of your libelant's claim in the sum of \$200,000, with costs. 15

SILAS B. AXTELL,
Proctor for Libelant,
Office and P. O. Address,
9 State Street,
New York City.

16

Libel

State of New York, City and County of New York, ss.:

William Nahmeh, being duly sworn, deposes and says: that he is the libelant in the within action; that he has read the foregoing libel and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

17

WILLIAM NAHMEH.

Sworn to before me, this 23rd
day of March, 1922.

Anna Kiefer,
Notary Public,
Kings County No. 381.
Cert. Filed in New York County No. 261.

18

**Memoranda of Garvin, J., of December 22, 1922
and January 5, 1923.**

19

Nahmeh v. U. S. A.

Granted, no papers in opposition having been submitted.

December 22, 1922.

**EDWIN L. GARVIN,
U. S. D. J.**

Since the foregoing memorandum was filed, it has been brought to my attention that the Government filed a brief on December 21. The memorandum is therefore recalled and the matter is disposed of as follows:

20

The action is in rem. The Court has no jurisdiction in this district and hence can do nothing by way of transfer of the action to the Southern District of New York even if it would be there, which may be doubted.

The Court must now dismiss this action and it is so ordered.

January 5, 1923.

**EDWIN L. GARVIN,
U. S. D. J.**

21

Exceptions.

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK.WILLIAM NAHMEEH,
Libellant,

—against—

UNITED STATES OF AMERICA,
Respondent.

23

Comes Now, the United States of America, respondent herein, and appearing specially for the purpose of these exceptions and not otherwise, by its proctor Ralph C. Greene, United States Attorney for the Eastern District of New York, and excepts to the libel and complaint of William Nahmeh in a cause of action, civil and maritime, and to each of the causes of action stated therein, upon the following grounds:

24 First: That it does not appear in said libel that the said steamship "Quinnipiac" was at the date of filing of said libel within the Eastern District of New York.

Second: That it does not appear from said libel that on the date of the filing thereof the said Steamship "Quinnipiac" was employed as a merchant vessel.

Third: That at the time it is claimed that the libellant suffered the injury set forth in the

libel the said steamship was in the possession and control of the United States Transport Company, Inc. under bareboat charter and that there is no right in personam against the United States but that the cause of action set forth is an action in rem against the Steamship "Quinnipiac"; that at the time of the filing of said libel the Steamship "Quinnipiac" was not within the Eastern District of New York nor within the territorial jurisdiction thereof, but was within the Southern District of New York and the territorial jurisdiction thereof.

26

Fourth: That at the time it is claimed that the libellant suffered the injury set forth in the libel, the said steamship was in the possession and control of the United States Transport Company, Inc., under bareboat charter and that there is no right in personam against the United States but that the cause of action set forth is an action in rem against the Steamship "Quinnipiac"; that on the 25th day of January, 1921, the Steamship "Quinnipiac" mentioned in the libel herein was withdrawn from merchant service and ever since said 25th day of January, 1921, the said Steamship "Quinnipiac" remained and still is withdrawn from merchant service and in the possession of caretakers and during no part of said period was said steamship engaged in the carriage of passengers or cargo or in charge of an articled crew, but was during all of said time laid up and during none of said time was said steamship "Quinnipiac" employed as a merchant vessel.

27

28

Exceptions

Wherefore, respondent prays that said libel
be dismissed for want of jurisdiction.

RALPH C. GREENE,
United States Attorney for the
Eastern District of New
York, Appearing Specially
and not Otherwise,
Proctor for Respondent,
Office and P. O. Address,
Room 700-45 Broadway,
Borough of Manhattan,
City of New York.

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30

Order and Decree Denying Libellant's Motion
and Dismissing Libel.

31

At a stated term of the United States District Court held in and for the Eastern District of New York in the Court Rooms thereof in the Post Office Building, Borough of Brooklyn, City of New York, on the 19th day of January, 1923.

Present:—Hon. EDWIN L. GARVIN, U. S. D. J. 32

WILLIAM NAHMEH,
Libelant,

—against—

UNITED STATES OF AMERICA,
Respondent.

This cause having come on to be heard upon the motion of the libelant herein to transfer said cause to the District Court of the United States for the Southern District of New York, the libelant being represented by Silas B. Axtell, his proctor, and respondent by Ralph C. Greene, United States Attorney for the Eastern District of New York, its proctor, and Walter Schaffner, Assistant United States Attorney, and it appearing from the affidavit of the proctor for libellant, attached to said motion to transfer, that the vessel on which the libellant claims to

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34

Notice of Motion

have been injured was not at the time of the filing of the libel herein within the Eastern District of New York or the territorial jurisdiction thereof, and that therefore this Court is without jurisdiction herein.

It is ordered that the motion of the libellant to transfer the above entitled cause to the District Court for the Southern District of New York, be and the same hereby is denied, and

35 It is further ordered, adjudged and decreed that the above entitled action be and the same hereby is dismissed for want of jurisdiction.

EDWIN L. GARVIN,
U. S. D. J.

Notice of Motion.

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK.

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WILLIAM NAHMEEH,
Libellant,

—against—

UNITED STATES OF AMERICA,
Respondent.

Please take notice, that upon the annexed affidavit of Silas B. Axtell, verified the 9th day of December, 1922, and upon all the facts and

proceedings had heretofore herein, the undersigned will make a motion, at a stated term of this court for motions, at the Court Rooms, Post Office Building, Borough of Brooklyn, City of New York, on the 20th day of December, 1922, at 2 o'clock in the afternoon of that day, or as soon thereafter as counsel can be heard, for an order removing this cause to the United States District Court for the Southern District of New York, in which it shall proceed as if originally commenced therein, and for such other and further relief as may be just.

38

Dated, December 7, 1922.

SILAS B. AXTELL,
Proctor for Libelant,
Office and P.O. Address,
11 Moore Street,
New York City.

To:

Ralph C. Greene, Esq.,
Proctor for Respondent,
45 Broadway,
New York City.

39

40 **Affidavit of Silas B. Axtell, Read in Support of Motion.**

UNITED STATES DISTRICT COURT,

EASTERN DISTRICT OF NEW YORK.

WILLIAM NAHMEH,
Libelant,

—against—

41 UNITED STATES OF AMERICA,
Respondent.State of New York, City and County of
New York, ss.:

Silas B. Axtell, being duly sworn, deposes and says: that he is the proctor for the libelant in the above entitled action.

42 That this is an action for personal injuries sustained by the libelant while employed on board the S. S. Quinnipiac, a merchant vessel owned and operated by the respondent. That the injuries complained of were sustained on the 3rd of August, 1920, and the said injuries are alleged to be due to the negligence of the officers and seamen in command of that vessel as well as the unseaworthiness of the vessel; and by reason of the failure to render the libelant prompt and proper medical and surgical attendance. Damages are claimed in the sum of \$200,-

000. The libelant sustained very serious injuries having lost one of his legs.

The libel was filed in this court on the 30th of March, 1922, and due notice of the filing thereof was given to the United States Attorney for the Eastern District of New York, and a copy was duly served upon him and a copy was sent by registered mail to the United States Attorney General at Washington, D. C. That there has been no appearance or answer by the respondent, although the time to appear and plead has long since expired. That your deponent is informed and believes that at the time of the injuries, the S. S. Quinnipiac was operated by the United States Transport Steamship Company under a bare boat charter. That, therefore, under a recent decision of the United States Circuit Court of Appeals for the Second Circuit (Cunard Steamship Co. v. U. S. A., not yet reported), the only district in which suit can be brought is the district in which the vessel is found. That at the present time, your deponent is informed and believes that the vessel is lying at Cornwall within the County of Orange, State of New York, and within the Southern District of New York. That under Section 2, of the Act of March 9, 1920, under which Section suit against the United States is authorized, this court has power upon the application of the libelant, to transfer the cause to another district court of the United States. That the Section insofar as it is applicable,

46

Affidavit of Silas B. Axtell

provides, "Upon an application of either party, the cause may, in the discretion of the court, be transferred to any other district court of the United States."

47

The Court is asked to exercise its discretion in favor of the libelant because a new action could not be commenced since more than two years has elapsed since the injuries complained of were sustained. The libelant's injuries are very serious he having sustained the loss of one of his legs, and if this motion be denied, a grave injustice might result to him. The United States would in nowise be prejudiced by the granting of this motion since they have done nothing in this case.

Wherefore, it is respectfully prayed, that an order be entered removing this cause to the United States District Court for the Southern District of New York, and that the cause proceed in that court as if originally commenced therein.

SILAS B. AXTELL.

Sworn to before me, this 9th
day of December, 1922.

48

Anna Kiefer,
Notary Public,
Kings County No. 381.
Cert. filed in New York County No. 261.

Allowance of Claim of Appeal.

49

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK.WILLIAM NAHMEH,
Libelant,

—against—

UNITED STATES OF AMERICA,
Respondent.PETITION FOR APPEAL TO THE SUPREME COURT OF 50
UNITED STATES:

The above named libelant conceiving himself aggrieved by the decree made and entered on the 19th of January, 1923 in the above entitled cause dismissing the libel for want of jurisdiction, does hereby appeal from the said order and decree, to the Supreme Court of the United States for the reasons specified in the assignment of errors which is filed herewith, and prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

51

Dated, New York, March 22, 1923.

SILAS B. AXTELL,
Proctor for the Libelant.

The foregoing claim of appeal is allowed.

Dated, New York, March 26th, 1923.

EDWIN L. GARVIN,
U. S. D. J.

52

Assignment of Errors.**UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK.**

WILLIAM NAHMEH,
Libelant,

—against—

UNITED STATES OF AMERICA,
Respondent.

53

The libelant prays an appeal from the final decree of this Court, to the Supreme Court of the United States, and assigns for error:

First: That the court erred in entering the final decree dated the 19th of January, 1923, dismissing the libel in the above entitled action for want of jurisdiction.

Second: That the court erred in not granting libelant's motion for an order removing the above entitled cause to the United States District Court for the Southern District of New York.

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Third: That the court erred in denying libelant's motion to remove the above entitled cause to the United States District Court for the Southern District of New York.

Fourth: That the court erred in holding that it was without jurisdiction to do other than dismiss the libel.

Fifth: That the court erred in dismissing the libel on its own motion.

SILAS B. AXTELL,
Proctor for Libelant.

Certificate that Libel was Dismissed on the
Ground that Court Was Without Jurisdiction.

55

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK.

WILLIAM NAHMEH,
Libelant,

—against—

UNITED STATES OF AMERICA,
Respondent.

56

In this case, I hereby certify that the decree entered on the 19th of January, 1923, dismissing the libel is based solely on the ground that the court was without jurisdiction to do other than dismiss the libel.

Dated, New York, March 26, 1923.

EDWIN L. GARVIN,
U. S. D. J.

57

58

Citation.**United States of America, ss.:****The United States of America****GREETING:**

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the 25th day of April next, pursuant to an appeal filed in the Clerk's office of the District Court of the United States for the Eastern District of New York, wherein William Nahmeh is appellant and you are appellee, to show cause, if any there be, why the decree entered against the said appellant as in the said appeal mentioned, should not be corrected and speedy justice be done to the parties in that behalf.

Given under my hand at the City of New York, in the Eastern District of New York, this 26th day of March, in the year nineteen hundred and twenty-three.

EDWIN L. GARVIN,
U. S. D. J.

59
60

Stipulation.

61

UNITED STATES DISTRICT COURT,
 EASTERN DISTRICT OF NEW YORK.

WILLIAM NAHMEH,
 Libelant,
 —against—

UNITED STATES OF AMERICA,
 Respondent.

62

It is hereby stipulated and decreed, that the foregoing is a correct transcript of the record of the District Court in the above entitled action and that the same may be certified by the Clerk.

Dated, June July 25, 1923.

SILAS B. AXTELL,
 Proctor for Libelant.

RALPH C. GREENE,
 Proctor for Respondent.

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Clerk's Certificate.

UNITED STATES DISTRICT COURT,

EASTERN DISTRICT OF NEW YORK.

WILLIAM NAHMEH,
Libelant,

—against—

UNITED STATES OF AMERICA,
Respondent.United States of America, Eastern District of
New York, ss.:

I, Percy G. B. Gilkes, Clerk of the District Court of the United States for the Eastern District of New York, do hereby certify that the foregoing is a correct transcript of the record of the said district court in the above entitled action as agreed on by the parties.

In witness whereof I have caused the seal of the said Court to be hereunto affixed at the City of New York in the Eastern District of New York this 2nd day of ~~August~~, in the year one thousand nine hundred and twenty-three, and of the Independence of the United States the one hundred and forty-seventh.^{eighty}

PERCY G. B. GILKES,

Clerk.

J. G. Cochran
(6982) *Deputy Clerk*

(seal)